

REMARKS

Applicant has carefully reviewed this Application in light of the Final Office Action mailed June 1, 2009. Claims 12-13 and 15-37 are pending in this Application and Claims 12-13 and 15-24 stand rejected under 35 U.S.C. § 103(a). Claims 12-13, 15, and 18-24 have been amended to further define various features of Applicant's invention. Claims 1-11 and 14 were previously cancelled without prejudice or disclaimer. Claims 25-37 have been added as new claims and do not add any new matter. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 103

Claims 12-13 and 15-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,349,201 issued to Sean Ford ("Ford") in view of U.S. Patent No. 6,721,580 issued to Billy G. Moon ("Moon"). Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicant does not concede, do not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on *ex post* reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Applicant respectfully submits that the combination of *Ford* and *Moon* fails to disclose, teach or suggest the elements specifically recited in Applicant's claims. For example, the proposed combination of *Ford* and *Moon* fails to disclose, teach, or suggest the following elements recited in independent Claim 12:

detecting at least one available communications network at the location of the mobile cellular communication device;

if a cellular communication network is available, selecting the cellular network;

in case that no cellular communication network is available, enabling a module in the mobile cellular communication device for broadcasting over a global safety communication network, and selecting the global safety communication network;

The proposed combination of *Ford* and *Moon* also fails to disclose, teach or suggest the following elements recited in independent Claims 18 and 21:

wherein the mobile cellular communication device is operable to select a cellular communication network if the cellular communication network is available, and, in case that no cellular communication network is available, to enable the module for broadcasting over the global safety communication network and to select the global safety communication network;

The Examiner contends that *Ford* discloses "enabling a module for broadcasting over a global safety communication network, and selecting the global safety communication network." (Office Action, Page 5). The cited portions of *Ford* merely disclose a bullet proof vest sending a signal to a central station: "a *vest* . . . will *signal a central station* that the impact has been delivered." (*Ford*, Col. 2, lines 47-51, emphasis added). Another portion of *Ford* discloses a transmitter *sending a distress signal to a dispatcher or other receiver*. (*Ford*, Col. 5, lines 24-25, Fig. 3). *Ford* does not disclose, teach, or suggest "enabling a module in the **mobile cellular communication device** for broadcasting over a **global safety communication network**," as recited in independent Claim 12. *Ford* also does not disclose, teach, or suggest a "**mobile cellular communication device** . . . operable to enable [a] module for broadcasting over [a] **global safety communication network**," as recited in independent Claims 18 and 21. The Examiner has not pointed to any portion of *Moon* to show that *Moon*

discloses, teaches, or suggests the cited elements of independent Claims 12, 18 and 21. Applicant has not discerned that *Moon* discloses these specific elements either.

Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to the above cited limitations. *Ford* does not disclose, teach, or suggest the cited limitations of independent Claims 12, 18 and 21, and the Examiner has not pointed to any portion of *Moon* to support that *Moon* discloses these elements. Without disclosure of all claimed limitations, a *prima facie* case of obviousness is not established.

The references cited by the Examiner also do not disclose, teach, or suggest other elements of independent Claims 12, 18 and 21. For example, the Examiner argues that *Moon* discloses a communication system for detecting at least one available communications network and selecting a cellular network if a cellular communication network is available. (Office Action, Page 5). However, the cited portion of *Moon* merely discloses determining which communications services are available and then determining the energy required for emergency transmissions:

For example, apparatus 12 may determine services to which it is subscribed and then *determine whether one of those services is available for communications*. Apparatus 12 then *determines the energy required* for emergency transmissions using the available method at step 104. Apparatus 12 adds the energy required to the emergency threshold at step 106.

Apparatus 12 then *determines whether other wireless communications methods are available* at step 108. If so, apparatus 12 may repeat steps 102 through 106 for other available communications methods. Thus apparatus 12 may *determine an energy threshold that provides sufficient energy for attempting emergency communications using multiple communications methods*.

(*Moon*, Col. 7, lines 39-53, emphasis added).

That is, the cited portion of *Moon* discloses *determining the amount of energy required for emergency transmissions* after *determining whether services are available for communications*, but fails to disclose, teach, or suggest *first “selecting [a] cellular network”* if a cellular communication network is available, as recited in independent Claim 12 (emphasis added). *Moon* also does not disclose, teach or suggest “*selecting [a] global safety network*” *only in instances that “no cellular communication network is available,”* as

recited in independent Claim 12 (emphasis added). The cited portion of *Moon* also does not disclose, teach or suggest a mobile cellular communication device operable to “*select* a cellular communication network if [a] cellular communication network is available, and, *in case that no cellular communication network is available . . . to select* [a] global safety communication network,” as recited in independent Claims 18 and 21.

Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness with respect to the above cited limitations. *Moon* does not disclose, teach or suggest the cited limitations. The Examiner acknowledges that *Ford* does not disclose detecting at least one available communications network and selecting a cellular network if a cellular communication network is available. (Office Action, Page 5). Consequently, a prima facie case of obviousness with respect to the cited limitations is not established.

For at least these reasons, independent Claims 12, 18 and 21 and their respective dependent claims are allowable under 35 U.S.C. § 103. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 12-13 and 15-24.

New Claims

Applicant submits new Claims 25-37. Applicant respectfully submits that Claims 25-37 include no new matter, and are allowable at least because they depend from and provide further patentable limitations to Claims 12, 15, 18 and 21, shown to be allowable above. For at least these reasons, Applicant respectfully requests full allowance of newly-added Claims 25-37.

Request for Continued Examination (RCE)

Applicant encloses a Request for Continued Examination (RCE) Transmittal, and the Commissioner is hereby authorized to charge the RCE filing fee of \$810.00 to Deposit Account No. 50-2148 of Baker Botts L.L.P.

Petition for Extension of Time

Applicant encloses a Three-Month Petition for Extension of Time, and the Commissioner is hereby authorized to charge the extension filing fee of \$1110.00 to Deposit Account No. 50-2148 of Baker Botts L.L.P.

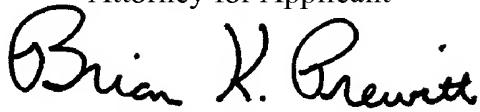
CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant encloses a Petition for Extension of Time for three months and authorizes the Commissioner to charge the amount of \$1110 to Deposit Account No. 50-2148 of Baker Botts L.L.P. Applicant believes no additional fees are due at this time, however the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2684.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicant



Brian K. Prewitt
Registration No. 60,135

Date: November 30, 2009

SEND CORRESPONDENCE TO:

BAKER BOTTS L.L.P.

CUSTOMER ACCOUNT NO. **31625**
512.322.2684
512.322.8383 (fax)